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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-5146

DAVID RAWLINGS — PETITIONER

V.

COMMONWEALTH OF KENTUCKY — RESPONDENT

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ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY

BRIEF FOR RESPONDENT IN OPPOSITION

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COMMONWEALTH OF KENTUCKY — RESPONDENT

BRIEF FOR RESPONDENT IN OPPOSITION

Jurisdiction

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257(3).

Question Presented

I. THE DECISION BELOW WAS BASED ON GROUNDS OTHER THAN THOSE ALLEGED IN THE PETITION AND DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

Statement of the Case

Petitioner's statement of the case is substantially correct. Additional material facts and corrections will be set out in the argument which follows.

Argument

I. THE DECISION BELOW WAS BASED ON GROUNDS OTHER THAN THOSE ALLEGED IN THE PETITION AND DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

Petitioner Rawlings alleges the court below decided that he lacked standing. Because "the decision below holding that petitioner lacked standing ... conflicts with previous decisions ..." he urges this Court grant his petition.

While the decision below did discuss "automatic standing" vis-a-vis Rakas v. Illinois, 439 U.S. 128 (1978) and Jones v. United States, 362 U.S. 257 (1960), it is manifestly clear from the decision that it was decided "in terms of substantive right under the Fourth Amendment." 581 S.W.2d at 349. The Court, while it felt that Rawlings probably did not have standing, went on and decided his claim without regard to his standing. The Court stated "that the search of Vanessa Cox's purse did not violate Rawlings' legitimate or reasonable expectation of freedom from governmental intrusion." 581 S.W.2d at 350. The issue of standing was therefore not decided below and Mr. Rawlings is precluded from doing so now. Cardinal v. Louisiana, 394 U.S. 437 at 438.

Conclusion

The decision below is based on grounds other than those alleged in the petition. It is manifest that the petition does not present a substantial federal question and certiorari should be denied.

Respectfully submitted,

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